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## ACQUISITION RESEARCH WORKING PAPER SERIES

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**ENGAGEMENT VERSUS DISENGAGEMENT:  
HOW STRUCTURAL & COMMERCIALY-BASED  
REGULATORY CHANGES HAVE INCREASED GOVERNMENT  
RISKS IN FEDERAL ACQUISITIONS**

**1 November 2004**

**by**

**Elliott Cory Yoder, Lecturer,  
Graduate School of Business & Public Policy**

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Prepared for: Naval Postgraduate School, Monterey, California 93943



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## About the Working Paper Series

This article is one in a series of papers addressing one or more issues of critical importance to the acquisition profession. A working paper is a forum to accomplish a variety of objectives, such as: (1) present a rough draft of a particular piece of acquisition research, (2) structure a “white paper” to present opinion or reasoning, (3) put down one’s thoughts in a “think piece” for collegial review, (4) present a preliminary draft of an eventual article in an acquisition periodical, (5) provide a tutorial (such as a technical note) to accompany a case study, and (6) develop a dialogue among practitioners and researchers that encourages debate and discussion on topics of mutual importance. A working paper is generally the “internal” outlet for academic and research institutions to cultivate an idea, argument or hypothesis, particularly when in its infant stages. The primary intent is to induce critical thinking about crucial acquisition issues/problems that will become part of the acquisition professional body of knowledge.

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Readers are encouraged to provide both written and oral feedback to working-paper authors. Through rigorous discussion and discourse, it is anticipated that underlying assumptions, concepts, conventional wisdom, theories and principles will be challenged, examined and articulated.





# Abstract

The purpose of this working paper is to highlight the challenges and associated risks Federal contracting officers face while conducting business under commercially-based contracting legislation and, with concurrent reductions in the acquisition workforce, the potential risks these changes place on the taxpayer.

It is the researcher's contention that the past decade-long wave of acquisition work-force reductions and commercially-inspired acquisition reforms has created a responsive and progressive business environment. Yet, it has done so at the cost of the Federal government becoming less "engaged." In fact, the government has become "disengaged" in key oversight and management functions. This disengagement may be exposing Federal contracting officers and taxpayers to greater financial, programmatic and performance risks. The working paper will highlight recent legislation and its impact on determining "fair and reasonable pricing" for "commercial item" acquisitions and highlight workforce changes which negatively impact regulatory oversight and management capability, and will make specific recommendations for improving performance and reducing risks in Federal acquisitions and contracting.





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- “The Naval Postgraduate School’s Defense-Focused Master’s Programs in Acquisition and Contracting,” *Navy Supply Corps Newsletter*, March-April 2004.
- “Lessons for Contingency Contracting, Humanitarian Operations in Uzbekistan,” *Army AL&T Magazine*, September-October 2002, pg. 38-40.
- “Creating Something from Nothing,” *Navy Supply Corps Newsletter*, July-August 1999.



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Disclaimer: The views represented in this report are those of the author and do not reflect the official policy position of the Navy, the Department of Defense, or the Federal Government.



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# Introduction

## The Backdrop

Acquisition reform initiatives, commercialization of business processes, and a decade-long streamlining of the Acquisition Workforce have all been aimed at fundamentally improving the business of acquiring goods and services for Federal Agencies, including the Department of Defense.

The National Performance Review kicked-off the current era's wave of reforms, initially commencing in 1993. Initial efforts at reform gained significant momentum during the Clinton presidency and, more recently, with influential reformers such as Dr. Jacques S. Gansler, former Undersecretary of Defense (AT&L) and with Representative Tom Davis (R-VA) Virginia, who chairs and leads the Committee on Government Reform.

The impetus for reforms and streamlining the acquisition workforce stems as much from a move towards greater efficiency as from the reality of adapting business practices to meet an ever-shrinking acquisition workforce; likewise, changes have been catalyzed by a concurrent effort to encourage innovative companies which traditionally have not conducted business with the Federal Government to enter into contracts for goods and services with Federal Agencies.

Amidst all of the reforms and structural changes has been a shift in the nature, or make-up, of what the Federal government procures—from predominantly tangible goods and hardware to a near fifty-fifty mix of goods and services.

Recent legislative initiatives have created substantive changes in the business processes that Federal contracting officers have at their disposal. The Federal Acquisition Streamlining Act (FASA<sup>1</sup>), the Federal Acquisition Reform Act (FARA<sup>2</sup>) and

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<sup>1</sup> Act may be cited as the "Federal Acquisition Streamlining Act of 1994".

<sup>2</sup> Act may be cited as the "Federal Acquisition Reform Act of 1995".





the Services Acquisition Reform Act (SARA<sup>3</sup>) have all moved the Federal acquisition policies and procedures closer to commercial-industry standard.

However, the concurrent down-sizing of the acquisition workforce, combined with the move towards commercial-style business processes under recent legislation, have increased the business risks facing Federal contracting officers and, ultimately, the taxpayers.

This paper explores the concepts of engagement and disengagement related to recent acquisition workforce structural changes and concurrent legislation aimed at commercializing Federal acquisition business practices.

### Engagement and Disengagement Concept Definitions.

The concepts of ‘engagement’ and ‘disengagement’ are derived from their definitions found within the Oxford English Dictionary<sup>4</sup>. Engagement, for the purposes of this paper, is broadly defined as to be bound by or committed to a cause, to involve or commit to, to mesh with. Within this context, the researcher defines ‘engagement’ as the means, capability and willingness of the Federal government to monitor and oversee the actions of contractors and subcontractors in promise of, or in actual receipt of Federal tax dollars under federally-awarded contracts. Conversely, the term ‘disengagement’ means the inability or unwillingness of the Federal Government to monitor and oversee the actions of contractors and subcontractors in promise of, or in actual receipt of Federal tax dollars under federally-awarded contracts.

### Purpose of this Working Paper.

The purpose of this working paper is to highlight the challenges and associated risks that Federal contracting officers face while conducting business under commercially-based contracting legislation and with concurrent reductions in the acquisition workforce, and the potential risks that these changes place on the taxpayer.

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<sup>3</sup> Act may be cited as the “Service Acquisition Reform Act of 2003”.

<sup>4</sup> The Oxford English Dictionary (unabridged), Oxford University Press, 2004.



It is the researcher's contention that the past decade-long wave of acquisition workforce reductions and commercially-inspired acquisition reforms has created a responsive and progressive business environment. Yet, it has done so at the cost of the Federal government becoming less "engaged." In fact, the government has "disengaged" in key oversight and management functions. This disengagement may be exposing Federal contracting officers and taxpayers to greater financial, programmatic and performance risks. The working paper will highlight recent legislation and its impact on determining "fair and reasonable pricing" for "commercial item" acquisitions, illustrate workforce changes which negatively impact regulatory oversight and management compliance, and will make specific recommendations for improving performance and reducing risks in Federal acquisition and contract management.



# The Push for Greater Efficiency and Effectiveness

The fall of the Soviet Union in December of 1991 prompted senior U.S. Government leaders to push for a “peace dividend.” Without our forty-year-old cold war foe, the Government could, it was believed, apply much of the money previously spent on the military to better domestic use. The National Performance Review (NPR), commencing in 1993 (only shortly after the cold war’s demise), really marks the start of an over-a-decade-long push towards greater efficiency and effectiveness of Government operations. The NPR, in essence, created the ideal of having a Government responsive to all its stakeholders, and its popularity was embraced by the executive branch and legislators alike.

Without a major foe, the military and its supporting personnel structures were targeted by the legislature and executive branch and experienced dramatic reductions. The acquisition community was not spared in this call for restructuring. According to the General Accounting Office, within the past decade the DoD downsized the civilian acquisition workforce by nearly 50%: from nearly 250,000 employees to less than 124,000.<sup>5</sup>

Several notable and respected academics, also during the past decade, proposed acquisition reform measures with the intent to improve efficiency and effectiveness of the acquisition process, and to gain those same efficiencies which would enable the DoD acquisition workforce to do more with less. Among notable scholars and influential works are: “Remaking Federal Procurement” by Steven Kelman; from Dr. Jacques S. Gansler, former Undersecretary of Defense (AT&L) now Vice-President for Research at the University of Maryland, “Moving Toward Market-Based Government...,”<sup>6</sup> “Commercial Pricing,”<sup>7</sup> and “A vision of the Government as a

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<sup>5</sup> GAO-02-630: Acquisition Workforce; Department of Defense Plans to Address Workforce Size and Structure Challenges, April 2002.

<sup>6</sup> Dr. Jacques S. Gansler, *Moving Toward Market-Based Government: The Changing Role of Government*, University of Maryland, June 2003.

<sup>7</sup> “Commercial Pricing” National Contract Management Association, 1998.



World-Class Buyer: Major Procurement Issues for the Coming Decade.”<sup>8</sup> Without reservation, this researcher asserts these authors and visionaries have influenced modern thinking in acquisition reform.

Additionally, legislators such as Congressman Tom Davis, representing Virginia’s 11th District and Chairman of the House Committee on Government Reform, have embraced and initiated—through legislative means—reformation of the acquisition process, including the passage of the Federal Acquisition Streamlining Act of 1994, the Federal Acquisition Reform Act of 1995, and the Service Acquisition Reform Act of 2003. All of the Acts (FASA, FARA, and SARA) created “commercial” buying practices aimed at garnering greater efficiency and effectiveness in the acquisition process, and eliciting greater participation in Federal acquisitions by non-traditional contractors.

Notwithstanding all of the legislative changes mandated by the aforementioned, Congressman Davis is, at the date of this working paper, sponsoring a bill known as the Acquisition System Improvement Act (ASIA), co-sponsored by Representative Duncan Hunter of California.<sup>9</sup> Yet, despite the manifold benefits attained by adopting commercial buying practices, the specific results of legislation and its implementation is not without strong critics. Two noteworthy challengers are Steven L Schooner, Associate Professor of Law at George Washington University School of Law, whose critique was published in an article entitled, “Fear of Oversight: The Fundamental Failure of Businesslike Government,”<sup>10</sup> and Danielle Brian, Executive Director of the Project on Government Oversight (POGO<sup>11</sup>).

Criticism of the legislated reforms can be summarized as follows: the legislative reforms decrease critical managerial and oversight responsibilities traditionally afforded

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<sup>8</sup> Dr. Jacques S. Gansler, *A Vision of the Government as a World-Class Buyer: Major Procurement Issues for the Coming Decade*, University of Maryland, January 2002.

<sup>9</sup> H.R. 4228 of the 108<sup>th</sup> Congress. Latest Major Action: 5/5/2004 House committee/subcommittee actions. Status: Executive Comment Requested from DOD.

<sup>10</sup> Steven L. Schooner, Associate Professor of Law, George Washington University of Law, George Washington University Press, July 23<sup>rd</sup>, 2001.

<sup>11</sup> Project on Government Oversight (POGO) is a non-profit organization, at [www.pogo.org](http://www.pogo.org).



the Federal contracting officer, thus exposing the contracting officer and the taxpayer to significant risks.

## Moving Towards Commercialization: FASA and FARA

The Federal Acquisition Streamlining Act of 1994 represented the beginning of the legislative acquisition reforms aimed at commercialization.

Among one of its many major provisions was the concept of “commercial item” acquisition. Prior to FASA, Federal acquisitions, according to rigid criteria, were subject to myriad laws and regulations—compliance with which was mandatory for contractors participating in Federal procurements.<sup>12</sup> The plethora of regulatory requirements mandated by the Federal Acquisition Regulation (FAR), along with the implementation guidance under the Defense Federal Acquisition Regulation (DFAR) and specific agency mandates and regulations, created a “choke hold” on contractors doing business with the Federal Government; these regulations acted as a solid barrier-of-entry for potential non-traditional commercial businesses that could offer much-needed commercial goods and services to the Federal government. Due to the overwhelming legislative and regulatory burden contractors faced when doing business with the Federal government, many potential contractors refused to conduct business in the Federal arena. Recognizing the dilemma emerging from traditional regulatory-based and constrictive business practices (and the impact these were having on potential and actual participants with the Federal government), the Department of Defense (DoD) contracted a study with the management consulting firm of Coopers and Lybrand to study the impact of DoD’s acquisition regulations and oversight requirements on its contractors.

In December 1994, Coopers and Lybrand issued its report, which identified over 120 regulatory and statutory cost drivers that, according to the study, increased the

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<sup>12</sup> Author commentary: The range and scope of laws applicable to a specific contract action was, and continues to be, based on acquisition methodology, type of contract vehicle, and the monetary amount of the acquisition.



price DoD paid for goods and services by eighteen percent.<sup>13</sup> As an example, contractor compliance with the provisions of the Truth in Negotiations Act (TINA) resulted in a 1.3% premium paid by the Government.<sup>14</sup> The table in Appendix A, sourced from the cited GAO Report, highlights the top ten of over 120 cost drivers which were identified by corporations participating in the study.<sup>15</sup>

Yet, even while the Federal government was experiencing a major downsizing and restructuring, it was inescapably reliant on the commercial marketplace for goods and services that were once provided by ‘organic’ sources within the Federal (and DoD) structure.

With the prompting of several industry groups, including the Aerospace Industries Association, Federal lawmakers moved quickly to implement the Federal Acquisition Streamlining Act (FASA 1994). This legislation created a preference for “commercial item acquisitions.” FASA eliminated many of the statutory and regulatory requirements for “commercial” items. The concept behind commercial item designation is that the Federal government could structure its buying processes to approximate what industry utilizes in its business-to-business transactions. Specifically, priced-based acquisition, little-to-no audit requirements, and less-intrusive data collection (if any), would be applicable for all commercial item buys. By statutory definition under FASA, commercial items were defined as items that were sold, leased or licensed to the general public. Under this definition, a clear and demonstrable sales track-record to the general public could be used as the basis for Government contracting officers to make their FAR-

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<sup>13</sup> *The DOD Regulatory Cost Premium: A Quantitative Assessment*, Coopers and Lybrand, December 1994.

<sup>14</sup> The Truth in Negotiations Act (TINA) is applicable to all negotiated sole source contracts in excess of \$550,000 and requires certified cost or pricing data, certified by an officer of the firm, as to current, accurate, and complete information as of the date of agreement on price. TINA allows the Government to hold contractors financially and potentially criminally liable for “defective pricing” if the Government materially based its acceptance and award on the cost and pricing data provided by the contractor.

<sup>15</sup> GAO/NSIAD-96-106: Acquisition Reform: Efforts to Reduce the Cost to Manage and Oversee DOD Contracts. GAO, April 1996.



mandated determination of “fair and reasonable” price pursuant to, and as a condition of, contract award.<sup>16</sup>

What is noteworthy is that the Federal Acquisition Regulation (FAR) Part 12, “Acquisition of Commercial Items,” was created to comply with the new commercial-based legislation, and effectively relieves contractors of many of the myriad laws and regulations to which they might otherwise be subject. (See Appendix B for FAR excerpt).

With industry lauding the FASA 1994 legislation, lawmakers quickly capitalized on the well-received commercial-item provisions. One year after the passage of FASA, new legislation was proposed which, in addition to numerous other provisions, expanded the definition of “commercial item” to allow for even greater participation in Federal acquisitions from non-traditional firms; likewise, these provisions further reduced the burden of complex and costly statutory requirements originally identified by the Coopers and Lybrand study. The new legislation, the Federal Acquisition Reform Act of 1995, expanded the definition of “commercial item” to include not only items that were sold, leased, or licensed to the general public, but any items that were *offered* for sale, lease, or license to the general public. Additionally, the definition broadens to consist of items which have evolved from commercial items; this change will now include commercial items modified for Government use, commercial items and services combined for the Government requirement, non-developmental items, and services at catalog or market price.

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<sup>16</sup> FAR Part 12: While the contracting officer must establish price reasonableness in accordance with 13.106-3, 14.408-2, or Subpart 15.4, as applicable, the contracting officer should be aware of customary commercial terms and conditions when pricing commercial items. Commercial item prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller's liability, quantities ordered, length of the performance period, and specific performance requirements. The contracting officer must ensure that contract terms, conditions, and prices are commensurate with the Government's need.



**Table 1. Federal Acquisition Streamlining Act (FASA 1994) Highlights**

Created preference for “commercial item” acquisition.
Provided for utilization of “less intrusive” data sources in determining “fair and reasonable” pursuant to contract award; eliminated TINA requirements.
Created a “broad” definition of “commercial item” to allow for maximum applicability of the legislative and regulatory relief under the provision.
Created “best practice” business processes similar to commercial business-to-business standards.
Maximized reliance on industry and market forces to establish “fair and reasonable” pricing.

Source: table by Elliott C. Yoder.

Specific provisions of the Federal Acquisition Reform Act (FARA 1995) allowed for the utilization of Simplified Acquisition Procedures (SAP) for commercial item goods and services up to and including \$5 million dollars. Other highlights of FARA are provided in Table 2 below

**Table 2. Federal Acquisition Streamlining Act (FARA 1995) Highlights**

Expanded definition of “commercial item” and its applicability to include: <ul style="list-style-type: none"><li>• items which have evolved from commercial items</li><li>• items that are commercial with modifications to meet Government unique requirements</li><li>• combinations of commercial items and services for Government use</li><li>• non-developmental items (NDI – items originally developed and/or sourced by a Government agency)</li><li>• services at catalog or market prices</li></ul>
Prohibited the use of certified cost and pricing data under TINA for commercial items.
Allows the utilization of Simplified Acquisition Procedures (SAP) up to \$5 million for commercial goods and services.

Source: table by Elliott C. Yoder.

The “one-two” punch of FASA and FARA dramatically changed the business process operations of acquisitions for those items falling within the definition of





“commercial item.” Over 100 statutes and regulations are no longer applicable for commercial item buys, including TINA.

## Disengagement Emanating from FARA and FASA—Commercial Item Designation and Its Inherently Unique Challenges and Risks.

Disengagement, wherein the Government takes a less-active, less-intrusive approach to business, as defined earlier, results directly from FARA and FASA legislation and other provisions akin to these acts.<sup>17</sup>

As stated previously, the contracting officer is required by regulation to make a determination prior to contract award that the price is “fair and reasonable.”<sup>18</sup> The most preferred method to determine fair and reasonable pricing is through competition. The Federal Acquisition Regulation prescribes favored techniques for making fair and reasonable determinations, listed in order of precedence (FAR 15.401):

1. Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
2. The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:
  - i. Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness (see 15.403-1(c)(1)).
  - ii. Comparison of previously-proposed prices, previous Government- and commercial-contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

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<sup>17</sup> Author’s note: Disengagement and the push towards commercialization does not just stem from FASA and FARA legislation, but from other recent legislation including SARA and ASIA. SARA and ASIA are not specifically addressed herein, but perpetuate and expand the Government’s disengagement. Additionally, structural changes in the form of acquisition workforce reductions at DCAA and DCMA also contribute to disengagement, and are specifically addressed in later sections of this working paper.

<sup>18</sup> FAR 15.400 series.



- iii. Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- iv. Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- v. Comparison of proposed prices with independent Government cost estimates.
- vi. Comparison of proposed prices with prices obtained through market research for the same or similar items.
- vii. Analysis of pricing information provided by the offerer.

Commercial item designation under FARA and FASA, has one primary function or ideal. The basic idea behind commercial-item acquisition is to capitalize on competitive market forces to establish fair and reasonable pricing.<sup>19</sup>

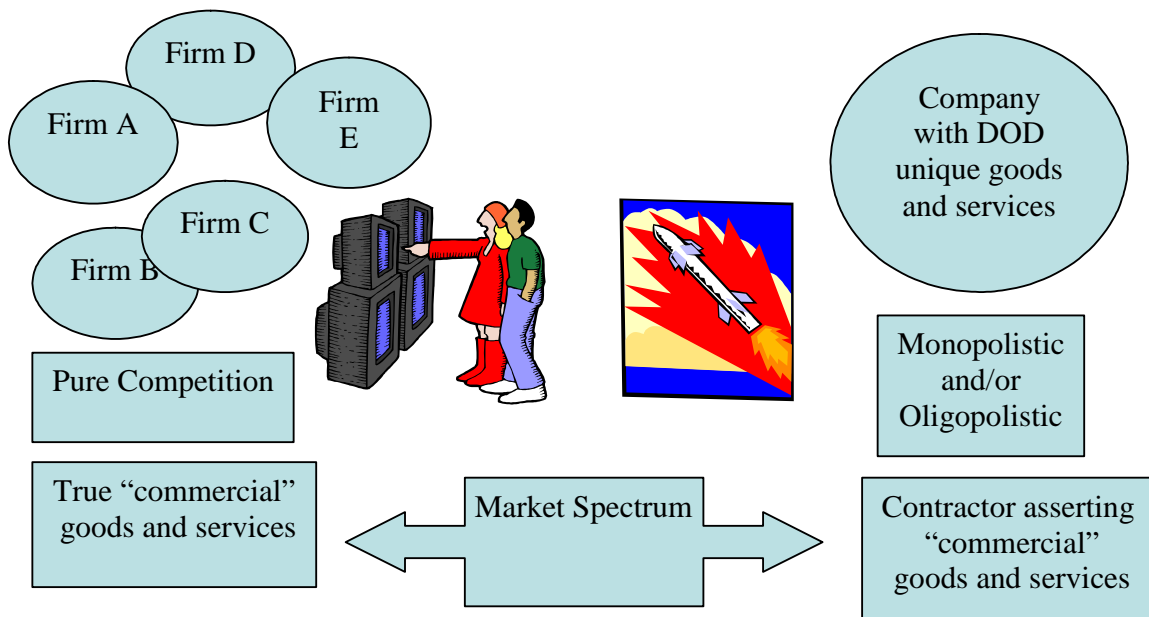
The Federal government is charged with maximizing the value of taxpayer dollars. In order to maximize value, the Government generally seeks to award its contracts through competition. However, the Government does not always buy truly commercial items that are sold in substantial quantities to the general public. Instead, and quite often, the Government buys unique products and services to which there is no direct commercially-available counterpart. The competitive market in which the Federal government acquires its goods and services is diverse: from purely competitive and 'commercial' competitors to oligopolistic or monopolistic contractors which match distinctive Government requirements.

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<sup>19</sup> Adequate competition, for these purposes, means, that first, two or more participants contend independently for the Government requirement, or that one contender believes there is more than one participant vying for the award.



**Figure 1. Market Spectrum**



Source: E. C. Yoder

In fact, most of the procurement dollars in fiscal year 2003 expended on contracts above the simplified acquisition procedure threshold, reported on DD350 reports (mandatory reports on contract actions), went to contractors that, generally speaking, did not offer bona-fide "commercial" goods or services. Of the nearly \$209 billion dollars expended in 2003, fully \$134 billion, representing 64.04 percent of the awarded contract dollars, went to the top 100 defense contractors (as defined by the monetary amount of DoD contract dollars awarded). And, the top ten defense contractors received \$83 billion, representing 39.72 percent, of the total dollars expended.<sup>20</sup> The top ten firms from 2003 are provided in Table 3 below.

<sup>20</sup> Figures and information derived from the Federal Procurement Data System (FPDS), 2003 data. As of the date of this working paper, 2004 data was not available.

**Table 3. Top Ten Companies by DOD Contract Award Dollars**

Company Name	Dollars Total 2003	Percent of Total
Lockheed Martin	\$21,927,183,277.	10.49%
Boeing	\$17,339,688,858.	8.30%
Northrop Grumman	\$11,125,799,243.	5.32%
General Dynamics	\$8,235,492,902.	3.94%
Raytheon	\$7,915,749,339.	3.79%
United Technologies	\$4,547,824,394.	2.18%
Halliburton	\$3,920,876,767.	1.88%
General Electric	\$2,842,131,348.	1.36%
Science Applications	\$2,615,868,549.	1.25%
Computer Sciences	\$2,530,846,723.	1.21%
Top Ten Summary	≈ \$81,808,000,000.	39.72%

Source: E. C. Yoder

The majority of dollars being awarded by DoD goes to “traditional” defense contractors. The dollars awarded to these firms were nearly evenly split between supplies (goods) and services; approximately 55% of the awards were spent on goods, and 45% on services. These firms, for a majority of the products and services they offer, operate in quasi-competitive environments. Such arenas are characterized as oligopolistic or monopolistic markets.

Federal Procurement Data System statistics for the first half of fiscal year 2004 indicate that of 3,171,745 total contract actions reported from DoD, fully 2,782,693 contract actions (or 87.73%) were reported on DD1057s for procurements under the Simplified Acquisition Procedure (SAP) threshold, (the DD1057 reports all actions under the Simplified Acquisition Threshold). Clearly, these actions are the best candidates for application of “true competition” under commercial-item designation. Yet, surprisingly, nearly one-half of all those SAP actions were either not available for competition as a



follow-on action, or were simply not competed.<sup>21</sup> To reiterate, the commercial item definition under FASA and FARA is very broad in its application and interpretation. Thus, contractors have broad leeway to assert their product or service is “commercial.” This creates a unique challenge for Federal contracting officers buying goods and services that are, in essence, unique to the Government and perhaps never sold in any quantity (or are in very limited quantities) to the general public. Thus, the contracting officer often finds no true competition for the product or service he/she seeks, finds that there is no commercial sales history of such products, and finds—to confuse matters more completely—that the offering business/contractor is asserting that its product or service is commercial and, therefore, subject to the provisions of FASA and FARA. This makes such acquisitions very challenging and risky for the contracting officer, and ultimately the taxpayer, especially when making the mandated determination of ‘fair and reasonable’.

This presents the following dilemma: firms may claim, under the definition of commercial item per FASA and FARA, that any item offered for sale to the general public qualifies as a commercial item, and is, therefore, exempt from dozens of statutes, including the Truth in Negotiations Act (TINA) requiring certified cost and pricing for all negotiated contracts in excess of \$550,000. Yet, despite business/contractor asserting “commercial item” designation, the Government is either not taking full advantage of competitive market forces to determine fair and reasonable price, or is unable to do so.

One model clearly illustrates the competitive forces at work in the marketplace. However, competitive forces, according to Porter’s five force model, require sales and time to fully realize any equilibrium and stable pricing.<sup>22</sup>

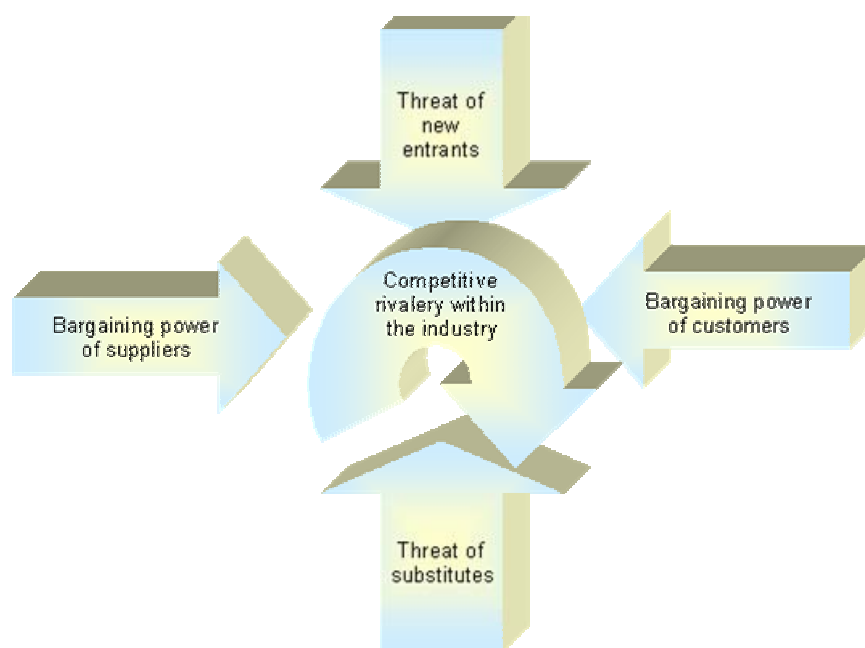
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<sup>21</sup> Derived from the Federal Procurement Data System (FPDS), DOD Summary of Awards, October 2003 through June 2004.

<sup>22</sup> Michael E. Porter, Competitive Strategy: Techniques for Analyzing Industries and Competitors, 1980.



**Figure 3. The Five Competitive Forces**



Source: Michael Porter<sup>23</sup>

Some agencies have made attempts to mitigate the negative effects of products and services which have only been offered for sale to the general public—but which have not actually sold—by requiring that firms sell at least one of the products in question to the general public prior to the Federal government award. However, the researcher contends that this practice provides only the façade of true competition, as the effects of competitive sales and associated pricing equilibrium are not fully materialized with one sale, or a limited number of sales, in a short time period.

Additionally, on those actions above the SAP threshold, DoD contracting officers currently rely on price-analysis techniques based on uncertain and uncertified data, including prior pricing histories for same or similar items bought in the past. The Government Accounting Office and this researcher contend that the Government is at higher risk of paying inflated prices with these techniques than after obtaining certified cost and pricing data necessary under TINA. GAO specifically warns that higher risks

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<sup>23</sup> Ibid.

result from utilization of historical data, vice competitive forces, Governmental order changes, Governmental requirement modification, and contractor/corporation mergers and acquisitions which may affect the basis of the original estimates and proposals from prior acquisitions. The practice of relying on aging data, even data that was previously certified, places significant risks on that data's reliability of forming meaningful comparisons to current procurements.<sup>24</sup> Yet, historical data is one of the higher-tier methodologies recommended when competition is not present and the use of certified cost and pricing data is not available, or not allowed, such as under commercial-item acquisitions. Thus, a significant paradox exists in implementing sound business practices in determining "fair and reasonable."

The bottom line is that FASA and FARA commercial-item designation may work well for goods and services in a truly competitive marketplace, but it allows for potential over-pricing in limited- or quasi-competitive markets such as the monopolies and oligopolies in which the Federal Government spends most of its dollars.

To compound the problem, the commercial-item legislation has created an environment of disengagement in that the Government may no longer have the tools required to shift the balance of pricing power in limited- or non-competitive acquisitions through the use of TINA provisions. Thus, the Government may be subjected to paying far greater prices for products and services, and perhaps not even realize it is doing so.

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<sup>24</sup> GAO-02-502: *Contract Management: DOD Needs Better Guidance on Granting Waivers for Certified Cost or Pricing Data*, General Accounting Officer, April 2002.



# DOD Contract Audit and Management Workforce Dynamic

Another prime example of the shift from engagement to disengagement is represented by the manpower reductions in two Department of Defense agencies: the Defense Contract Audit Agency (DCAA), and the Defense Contract Management Agency (DCMA).

The Defense Contract Audit Agency (DCAA) has a multi-purpose mission designed to protect the interests of the Department of Defense (and ultimately the taxpayer) through provision of audit services on defense procurements and contracts. DCAA provides a wide variety of products and services to contracting officers across the full spectrum of the contracting process. Some of the more prominent functions are provided in Table 4 below.





**Table 4. Defense Contract Audit Agency  
Primary Mission Functions**

Primary Mission Area	Primary Mission Function
Pre-award Contract Audit Services	Price Proposal Support
	Pre-Award Surveys
	Forward Pricing Labor and Overhead Rate (Agreements and Recommendations)
Post-award Contract Audit Services	Incurred Costs/Annual Overhead Rates (establishing final billing rates)
	Truth in Negotiations Act (TINA) Compliance
	CAS (Cost Accounting Standards) Compliance and Adequacy
	Claims
Contractor Internal Control System Audits	Financial Capability Assessments
	Accounting
	Estimating
	Electronic Data Processing
	Compensation
	Billing
	Budgeting (and Estimating)
	Material Management
	Labor
	Purchasing
	Indirect and Other Cost Analysis
	Fact-Finding and Post-Action Analysis
	Procurement Liaison Services

Source: Data from DCAA web-site ([www.DCAA.mil](http://www.DCAA.mil)), layout by E. C. Yoder.

The Federal Acquisition Regulation (FAR) specifically addresses contract audit functions and provides regulatory mandates in FAR Part 42.000 and 42.100. However, the functions that DCAA performs may impact nearly all the FAR provisions, depending on the nature of the acquisition. For example, specific post-award audits on Cost



Accounting Standards compliance encompass FAR Part 30—Cost Accounting Standards.

According to DCAA statistics, in FY 2003, DCAA audited 9,829 pricing proposals (pre-award) with a total dollar value of \$160.9 billion. Additionally, audits of incurred costs and special audits (post-award) during that same period totaled \$103.6 billion. Approximately \$2.2 billion in net savings were reported during the year. When compared to the \$405.0 million expended for the Agency's operations, the return on taxpayers' investment in DCAA was \$5.50 for each dollar invested.<sup>25</sup>

The Defense Contract Management Agency (DCMA) performs, as the name implies, contract management functions on defense acquisitions and contracts. The Defense Contract Management Agency (DCMA) is the Department of Defense (DoD) component that works directly with Defense suppliers to help ensure that DoD, Federal, and allied government supplies and services are delivered on time, at projected cost, and meet all performance requirements.

DCMA professionals serve as "information brokers" and in-plant representatives for military, Federal, and allied government buying agencies—both during the initial stages of the acquisition cycle and throughout the life of the resulting contracts.

- Before contract award, DCMA provides advice and services to help construct effective solicitations, identify potential risks, select the most capable contractors, and write contracts that meet the needs of our customers in DoD, Federal and allied government agencies.
- After contract award, DCMA monitors contractors' performance and management systems to ensure that cost, product performance, and delivery schedules are in compliance with the terms and conditions of the contracts.

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<sup>25</sup> DCAA data from [www.DCAA.mil](http://www.DCAA.mil).



DCMA is a recognized leader of, and contributor to many of the DoD's business reform initiatives. Those initiatives' goals are to improve the Nation's defense in the most economical and efficient ways possible<sup>26</sup>.

The Federal Acquisition Regulation (FAR) Part 42.200 defines the primary functions of DCMA applicable to contract management. The list of functions is too great to imbed in its entirety in this discussion, but is provided in its completeness as Appendix C.

The authority and the mandate to perform contract administration and management stems from legislation—namely 48 CFR Chapter 1. Specifically, when a contract is assigned for administration under Subpart 42.2, the Contract Administration Office (CAO) shall perform contract administration functions in accordance with 48 CFR Chapter 1, the contract terms, and, unless otherwise agreed to in an interagency agreement (see 42.002), the applicable regulations of the servicing agency.<sup>27</sup>

### Manpower and Personnel (Structural Changes) Contribute to Disengagement and Increase Risks.

Despite the functionality and service that DCAA and DCMA provide, in most cases mandated by statute or regulation, their workforces have been decimated by a decade's worth of cuts.

Currently, the Defense Contract Audit Agency has just over 4,000 personnel assigned, of which nearly 3,500 (over 85%) are auditors. The remaining 15% are assigned to administrative and clerical functions. The DCAA workforce is well-educated and capable: over 1,200 of the 4,000 have CPAs, over 3,500 have college degrees, and 797 have advanced degrees.<sup>28</sup>

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<sup>26</sup> Defense Contract Management Agency (DCMA) mission statement except, from [www.DCMA.mil](http://www.DCMA.mil).

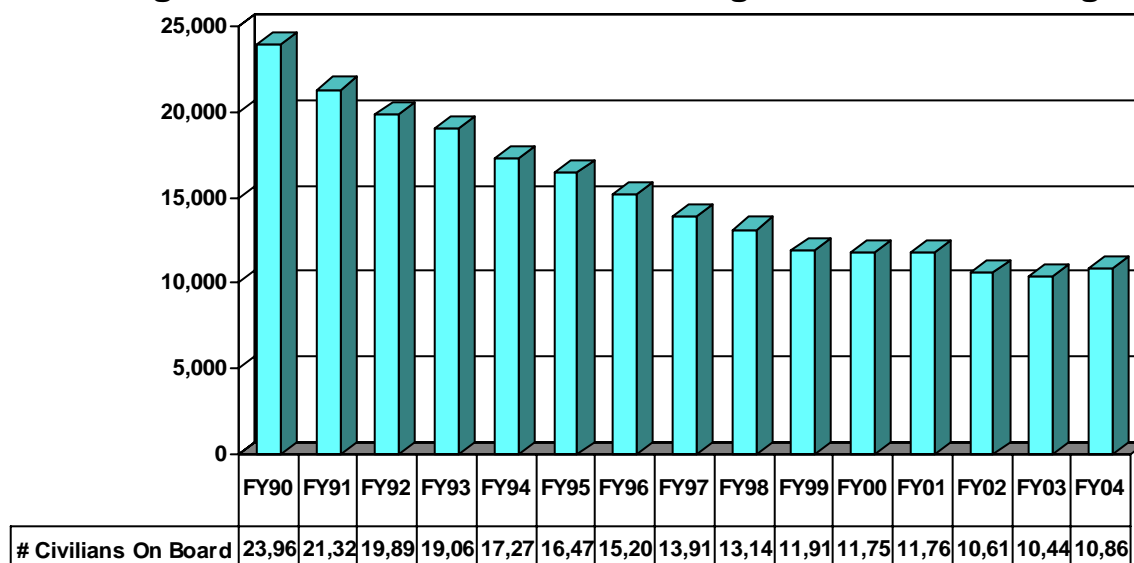
<sup>27</sup> Federal Acquisition Regulation (FAR) Part 42.

<sup>28</sup> Data from the Defense Contract Audit Agency (DCAA). Personnel data from 2003. Data from 2004 not available as of the date of this working paper.



The Defense Contract Management Agency (DCMA) employs 10,868 civilians and 623 military assigned within three districts. DCMA is currently managing 16,166 contractors with 316,119 contracts with an obligated value of \$918 billion. Management functions specifically performed include all those listed in Appendix C, which may include management functions uniquely defined in individual contracts—for example, some of these may be distinct-quality assurance plans, earned-value management, performance-based payment monitoring, etc., to name a few. Yet, DCMA Civilian staffing has taken a 54.6% reduction since 1990.

**Figure 3. DCMA Civilian End-Strength from 1990 through 2004**



Source: DCMA Briefing by Lisa Hamptonstall

The personnel strengths iterated above represent a fraction of the end-strength these organizations had a decade ago. Concurrent with the push towards acquisition reform, these agencies were dramatically down-sized. The general belief of academics and authors of acquisition reform is that with the advent of legislation which reshaped the business processes in Federal acquisitions, a concurrent reduction of “administrative” personnel should ensue. For example, FASA and FARA—with their commercial-item designation provisions, which relieved many of the mandatory statutory and regulatory requirements applicable to contractors—were also believed to reduce the administrative burden on the Federal acquisition communities charged with monitoring and compliance: DCAA and DCMA.



There was no shortage of calls for personnel reductions, aimed at capitalizing on the new commercial business models. Among some notable calls for reduction were the Coopers and Lybrand study<sup>29</sup> and several GAO reports, including an April 1996 report entitled, *Acquisition Reform: Efforts to Reduce the Cost to Manage and Oversee DoD Contracts*<sup>30</sup> and a 1997 report entitled, *Acquisition Reform: DoD Faces Challenges in Reducing Oversight Costs*<sup>31</sup> and a July 1998 report entitled, *Acquisition Management: Workforce Reductions and Contractor Oversight*<sup>32</sup> These publications called for greater efficiencies through risk-management techniques—techniques this researcher contends cause disengagement. Specific recommendations of the July 1998 GAO report indicate specific risk management strategies for DCAA; these appear at the end of this study as Appendix D.

While the DCAA and DCMA workforce is capable and well-managed, drastic cuts initiated in the early and mid-1990s have gutted the capacity for DCAA to and DCMA to perform their mission and functions.

Within the past five years, many academics, senior DoD personnel, and prominent policy makers have called for increased managerial and oversight capabilities. These may be in response to well-founded criticisms of the reform-initiative-driven reduction of oversight capabilities and management capacities needed for Federal acquisitions. Most notably, Stephen Schooner, Associate Professor of Law, George Washington University Law School, is very critical of reforms that espouse acquisition reforms with reduced oversight and management stemming from a reduction of statutes and regulations originally designed to protect the taxpayer.<sup>33</sup>

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<sup>29</sup> The DOD Regulatory Cost Premium: A Quantitative Assessment, Coopers & Lybrand/TASC, Inc., December 1994.

<sup>30</sup> GAO/NSIAD-96-106: General Accounting Office, April 1996.

<sup>31</sup> GAO/NSIAD-97-48: General Accounting Office, January 1997.

<sup>32</sup> GAO/NSAID-98-127: General Accounting Office, July 1998.

<sup>33</sup> Steven L. Schooner, Associate Professor of Law, *Fear of Oversight: The Fundamental Failure of Businesslike Government*, George Washington University of Law, 2001.



Additionally, as opposed to its mid-1990s focus on downsizing the acquisition system, the General Accounting Office has recently called for a re-thinking of the force structure. In April 2002, GAO recognized the negative effects of the prior decade's mass reduction of acquisition workforce; it, therefore, called for a fundamental restructuring of the civilian acquisition workforce to foster new applicants, create sustainable force levels, and deal with an existing gutted force of which nearly 50% is eligible for civil service retirement.<sup>34</sup>

A year later, in March 2003, in response to Congressional concerns about the quantity and quality of the civilian workforce, GAO called for a strategic planning for workforce requirements, including that of the acquisition workforce; "something," they contend, was absent from current management initiatives.<sup>35</sup>

Once again, in a June 2004 report, GAO studied the more than \$20 billion spent since April 2003 to support rebuilding efforts in Iraq. The report highlighted the challenges facing acquisition personnel in the award and administration (management) of nearly one-hundred contracts and task orders. The GAO findings included clear identification of a lack of personnel resources to effectively conduct the pre- and post-award activities essential to ensure adequate oversight and management. In a DoD Inspector General report dated March 2004, GAO cites that, "overall, Government personnel did not provide adequate surveillance on 13 of the 24 contracts" examined.<sup>36</sup>

The Office of the Inspector General of the Department of Defense (DODIG) issued an audit report in February 2000 entitled, *DOD Acquisition Workforce Reduction Trends and Impacts*, in which several critical and negative impacts of acquisition workforce reductions are identified, including:

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<sup>34</sup> GAO-02-630: General Accounting Office, April 2002.

<sup>35</sup> GAO-03-475: General Accounting Office, March 2003.

<sup>36</sup> GAO-04-605: General Accounting Office, June 2004.



- Increased backlog in closing out completed contracts
- Increased program costs resulting from contracting for technical support vice using in-house (organic) resources
- Insufficient personnel to fill-in for employees on deployment
- Insufficient staff to manage requirements
- Reduced scrutiny and timeliness in reviewing acquisition actions
- Personnel retention difficulties
- Increased procurement action lead time (PALT)
- Skill imbalances
- Lost opportunities to develop cost/savings initiatives

The DODIG report was keen to point out that without changes to the structural force, continued and lasting problems in oversight and management will likely result,<sup>37</sup> potentially exposing the Government and its taxpayers to unacceptable levels of risk.

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<sup>37</sup> Office of the Inspector General, Department of Defense (DODIG), Report Number D-2000-088, February 29, 2000.



# Engagement and Disengagement: Conclusions and Recommendations

Acquisition reform initiatives, born from the necessities emanating from changing market dynamics, and desired efficiencies and effectiveness of Government operations originally proposed under the National Performance Review (NPR), have taken strong root from legislation such as FASA and FARA. The push for reform is not over. Additional legislation, not specifically the topic of this work, have either been passed, or are in process, for example: the Services Acquisition Reform Act (SARA) passed in early 2004. SARA called for, among many of its provisions, a further use of commercially-based processes. Later, Congressman Tom Davis, Chairman of the House Government Reform Committee, introduced a bill in May 2004, known as the Acquisition System Improvement Act (ASIA). The ASIA legislation calls for the authorization of share-in-savings contracts, wherein contractors are “rewarded” for creating savings to existing processes and systems. Clearly to the decade-long push towards greater reform is not likely to be reversed in the upcoming years.

The 1980’s experienced a tightening of oversight and management (engagement) based on system abuses of contractors and acquisition personnel alike. The 1990’s, in response to the end of the Cold War, a call for a ‘peace dividend’ and innovative thinking in acquisition reforms resulted in a loosening of oversight and management and concurrent reductions in the acquisition workforce (disengagement) dedicated to performing those functions.

The researcher contends that reform initiatives have improved operations. But faults in the application of FASA and FARA, combined with personnel reductions, have created too large a void in managerial and oversight capabilities within the DoD. Commercialization is here to stay, and rightfully so. Policy makers and practitioners need to understand the risks in the commercialized and downsized environment.

The researcher, although critical of the impacts that disengagement has on oversight and management, and the associated financial and managerial risks the





Government assumes, does not believe the reforms lack merit. The reforms have, to a large extent, given the Federal Government the capability to do more with less, and to capitalize on private industries' ability to provide goods and services in response to Government needs.

Notwithstanding, there are several recommendations that the researcher proposes to ensure sound and efficient management and oversight, and to execute sound business practices aimed at garnering maximum efficiency and effectiveness of operations. Hence, in order to bring management and oversight back to a reasonable balance between full-engagement versus extreme disengagement, the following recommendations are proposed:

Recommendation 1: Eliminate the FASA and FARA provision allowing contractors to assert commercial item status on goods or services when contractors cannot provide evidence of substantial sales to the general public, or sales in sufficient quantities to Government agencies. The condition for contractors to demonstrate a track record of business-to-business and/or business-to-Government sales, as a condition to cite commercial-item status, will ensure the competitive-market forces and market-pricing pressures drive the prices being offered for the instant contract.

Recommendation 2: Increase the civilian personnel at DCAA and DCMA—through statutory authority and appropriation—to levels commensurate with the scope of duties prescribed in the Federal Acquisition Regulation. DCAA and DCMA civilian personnel structural cuts have decimated their ability to effectively and efficiently manage and oversee DoD contracting and acquisitions; this is despite innovating and aggressive efforts by their management to transform business operations to deal with the cuts. Increasing the number of people, effectively creating a personnel-based force multiplier, will allow for better coverage of the hundreds of thousands of contract actions under their administrative and audit authority.



Recommendation 3: Increase funding for graduate education opportunities for the civilian acquisition workforce beyond the basic provisions of DAWIA. Author and pass specific legislation that authorizes and appropriates money earmarked for Agency graduate-level education. This will allow for acquisition professionals to progress in the dynamic and ever-challenging acquisition career field, will increase the skills and capabilities of a finite workforce, and will foster attraction and retention of motivated personnel to Government acquisition positions.

Recommendation 4: Assign key acquisition personnel as liaison to the Congressional Reform Committee to serve as stakeholder representative in the formulation and efficacy reviewer stages of acquisition reform legislation.

While these recommendations are specifically proposed to address the problems in reform initiatives and structural changes contained within this work, they will go far to protect the interests of the taxpayer over the long-term by re-thinking commercial-item legislation and optimizing the force structure required to effectively and efficiently manage contracts in the reformed environment.



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## Appendix A:

### Top Ten Cost Drivers Identified by Coopers and Lybrand

Cost driver	Description
DOD quality program requirements	An umbrella military specification (MIL-Q-9858A) requiring contractors to establish quality assurance programs to ensure compliance with contract requirements.
Truth in Negotiations Act	A statute (P.L. 87-653) requiring contractors to justify cost proposals and proposed contract prices with detailed cost or pricing data that must be certified as accurate, complete, and current.
Cost/schedule control system	A requirement that contractors have an integrated management control system to plan and control the execution of cost-reimbursable contracts.
Configuration management requirements	A military standard (MIL-STD-973) for DOD approval of all contractor configuration changes to technical data packages.
Contract-specific requirements	DOD-imposed requirements that are not codified in statutes, regulations, military specifications, or standards.
Defense Contract Audit Agency/Defense Contract Management Command interface	Costs deriving from daily interaction of contractor personnel with auditors from the Defense Contract Audit Agency and quality inspectors and functional experts from the Defense Contract Management Command.
Cost accounting standards	Requirements for ensuring consistent and equitable allocation of costs and for disclosing accounting practices and contractor interpretation of certain standards.
Material management and accounting system	A requirement (DFARS-242.72) for certain contractors to establish and maintain a system that accurately forecasts material usage and ensures that costs of all materials are appropriately allocated to specific contracts.
Engineering drawings	A guideline (MIL-STD-100E) for preparing engineering drawings.
Government property administration	A requirement (FAR part 45) that contractors assume responsibility for maintaining and accounting for government-owned property.

Note: DOD, Department of Defense; MIL-STD, military standard; DFARS, Defense Federal Acquisition Regulation Supplement; FAR, Federal Acquisition Regulation.

Source: GAO/NSAID-96-106; Acquisition Reform: Efforts to Reduce the Cost to Manage and Oversee DOD Contracts, April 1996.



## Appendix B.

### FAR Part 12 Provisions for Statutory Relief for Commercial Items.

#### **12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.**

(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial items:

- (1) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).
- (2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).
- (3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).
- (4) 41 U.S.C. 701, et seq., Drug-Free Workplace Act of 1988 (see 23.501).
- (5) 31 U.S.C. 1354(a), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see 22.1302).

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

- (1) 40 U.S.C. 327 et seq., Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305).
- (2) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502).
- (3) 49 U.S.C. 40118, Requirement for a clause under the Fly American provisions (see 47.405).

(c) The applicability of the following laws has been modified in regards to Executive agency contracts for the acquisition of commercial items:

- (1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).
- (2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.403).
- (3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).



## **12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

- (1) 10 U.S.C. 2631, Transportation of Supplies by Sea (except for the types of subcontracts listed at 47.504(d)).
- (2) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see Subpart 19.2).
- (3) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see Subpart 3.8).
- (4) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).
- (5) 41 U.S.C. 253(d), Validation of Proprietary Data Restrictions (see Subpart 27.4).
- (6) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see Subpart 3.4).
- (7) 41 U.S.C. 254(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see 15.209(b)).
- (8) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see Subpart 5.2).
- (9) 41 U.S.C. 418(a), Rights in Technical Data (see Subpart 27.4).
- (10) 41 U.S.C. 701, et seq., Drug-Free Workplace Act of 1988 (see Subpart 23.5).
- (11) 46 U.S.C. Appx 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5) (except for the types of subcontracts listed at 47.504(d)).
- (12) 49 U.S.C. 40118, Fly American provisions (see Subpart 47.4).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, et seq., (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:



(1) 41 U.S.C. 253(g) and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see Subpart 3.5).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306(a), Truth in Negotiations Act (see Subpart 15.4).

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).





## Appendix C.

Federal Acquisition Regulation (FAR) Part 42.0 defining DCMA functions.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with 48 CFR Chapter 1, the contract terms, and, unless otherwise agreed to in an interagency agreement (see 42.002), the applicable regulations of the servicing agency.

### **42.302 Contract administration functions.**

(a) The contracting officer normally delegates the following contract administration functions to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the cognizant Federal agency (see 2.101) has designated the contracting officer to perform these functions.

- (1) Review the contractor's compensation structure.
- (2) Review the contractor's insurance plans.
- (3) Conduct post-award orientation conferences.
- (4) Review and evaluate contractors' proposals under Subpart 15.4 and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.
- (5) Negotiate forward pricing rate agreements (see 15.407-3).
- (6) Negotiate advance agreements applicable to treatment of costs under contracts currently assigned for administration (see 31.109).
- (7) Determine the allowability of costs suspended or disapproved as required (see Subpart 42.8); direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved; and approve final vouchers.
- (8) Issue Notices of Intent to Disallow or not Recognize Costs (see Subpart 42.8).
- (9) Establish final indirect cost rates and billing rates for those contractors meeting the criteria for contracting officer determination in Subpart 42.7.



(10) Attempt to resolve issues in controversy, using ADR procedures when appropriate (see Subpart 33.2); prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.

(11) In connection with Cost Accounting Standards (see 30.601 and 48 CFR Chapter 99 (FAR Appendix)):

- (i) Determine the adequacy of the contractor's disclosure statements;
- (ii) Determine whether disclosure statements are in compliance with Cost Accounting Standards and Part 31;
- (iii) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and
- (iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230-2, 52.230-3, 52.230-4, 52.230-5, and 52.230-6.

(12) Review and approve or disapprove the contractor's requests for payments under the progress payments or performance-based payments clauses.

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations.

(14) Manage special bank accounts.

(15) Ensure timely notification by the contractor of any anticipated overrun or under run of the estimated cost under cost-reimbursement contracts.

(16) Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.

(17) Analyze quarterly limitation on payments statements and recover overpayments from the contractor.

(18) Issue tax exemption forms.

(19) Ensure processing and execution of duty-free entry certificates.

(20) For classified contracts, administer those portions of the applicable industrial security program delegated to the CAO (see Subpart 4.4).

(21) Issue work requests under maintenance, overhaul, and modification contracts.



(22) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.

(23) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Part 49.

(24) Negotiate and execute contractual documents settling cancellation charges under multiyear contracts.

(25) Process and execute notation of change of name agreements under Subpart 42.12.

(26) Perform property administration (see Part 45).

(27) Approve contractor acquisition or fabrication of special test equipment under the clause at 52.245-18, Special Test Equipment.

(28) Perform necessary screening, redistribution, and disposal of contractor inventory.

(29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property. When the ACO determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.

(30) In facilities contracts-

(i) Evaluate the contractor's requests for facilities and for changes to existing facilities and provide appropriate recommendations to the contracting officer;

(ii) Ensure required screening of facility items before acquisition by the contractor;

(iii) Approve use of facilities on a noninterference basis in accordance with the clause at 52.245-9, Use and Charges;

(iv) Ensure payment by the contractor of any rental due; and

(v) Ensure reporting of items no longer needed for Government production.

(31) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.

(32) Perform pre-award surveys (see Subpart 9.1).



(33) Advise and assist contractors regarding their priorities and allocations responsibilities and assist contracting offices in processing requests for special assistance and for priority ratings for privately-owned capital equipment.

(34) Monitor contractor industrial labor relations matters under the contract; apprise the contracting officer and, if designated by the agency, the cognizant labor relations advisor, of actual or potential labor disputes; and coordinate the removal of urgently-required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting officer.

(35) Perform traffic-management services, including issuance and control of Government bills of lading and other transportation documents.

(36) Review the adequacy of the contractor's traffic operations.

(37) Review and evaluate preservation, packaging, and packing.

(38) Ensure contractor compliance with contractual quality assurance requirements (see Part 46).

(39) Ensure contractor compliance with contractual safety requirements.

(40) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.

(41) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management, and independent research and development.

(42) Review and evaluate for technical adequacy the contractor's logistics support, maintenance, and modification programs.

(43) Report to the contracting office any inadequacies noted in specifications.

(44) Perform engineering analyses of contractor cost proposals.

(45) Review and analyze contractor-proposed engineering and design studies and submit comments and recommendations to the contracting office as required.

(46) Review engineering change proposals for proper classification, and when required, for need, technical adequacy of design, producibility, and impact on quality, reliability, schedule, and cost; submit comments to the contracting office.

(47) Assist in evaluating and make recommendations for acceptance or rejection of waivers and deviations.



- (48) Evaluate and monitor the contractor's procedures for complying with procedures regarding restrictive markings on data.
- (49) Monitor the contractor's value engineering program.
- (50) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system (see Part 44).
- (51) Consent to the placement of subcontracts.
- (52) Review, evaluate, and approve plant or division-wide small, small disadvantaged and women-owned small business master subcontracting plans.
- (53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged and women-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.
- (54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged and women-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.
- (55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged and women-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved as appropriate.
- (56) Maintain surveillance of flight operations.
- (57) Assign and perform supporting contract administration.
- (58) Ensure timely submission of required reports.
- (59) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes (see 43.101).
- (60) Cause release of shipments from contractor's plants according to the shipping instructions. When applicable, the order of assigned priority shall be followed; shipments within the same priority shall be determined by date of the instruction.
- (61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a



periodic, consolidated basis to ensure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

(62) Negotiate and/or execute supplemental agreements, as required, making changes in packaging subcontractors or contract shipping points.

(63) Cancel unilateral purchase orders when notified of non-acceptance by the contractor. The CAO shall notify the contracting officer when the purchase order is canceled.

(64) Negotiate and execute one-time supplemental agreements providing for the extension of contract delivery schedules up to 90 days on contracts with an assigned Criticality Designator of C (see 42.1105). Notification that the contract delivery schedule is being extended shall be provided to the contracting office. Subsequent extensions on any individual contract shall be authorized only upon concurrence of the contracting office.

(65) Accomplish administrative closeout procedures (see 4.804-5).

(66) Determine that the contractor has a drug-free workplace program and drug-free awareness program (see Subpart 23.5).

(67) Support the program, product, and project offices regarding program reviews, program status, program performance and actual or anticipated program problems.

(68) Monitor the contractor's environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract. ACO responsibilities include-

(i) Requesting environmental technical assistance, if needed;

(ii) Monitoring contractor compliance with specifications requiring the use of environmentally preferable products, energy-efficient products, and materials or delivery of end products with specified recovered material content. This must occur as part of the quality assurance procedures set forth in Part 46; and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance (see Subpart 23.4).

(69) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding payments, when on-site review is required.



(70) Deobligate excess funds after final price determination.

(b) The CAO shall perform the following functions only when and to the extent specifically authorized by the contracting office:

(1) Negotiate or negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes clause. Before completing negotiations, coordinate any delivery schedule change with the contracting office.

(2) Negotiate prices and execute priced exhibits for unpriced orders issued by the contracting officer under basic ordering agreements.

(3) Negotiate or negotiate and execute supplemental agreements changing contract delivery schedules.

(4) Negotiate or negotiate and execute supplemental agreements providing for the deobligation of unexpended dollar balances considered excess to known contract requirements.

(5) Issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from these instructions.

(6) Negotiate changes to interim billing prices.

(7) Negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause (see Subpart 16.2).

(8) Issue change orders and negotiate and execute resulting supplemental agreements under contracts for ship construction, conversion, and repair.

(9) Execute supplemental agreements on firm-fixed-price supply contracts to reduce required contract line item quantities and deobligate excess funds when notified by the contractor of an inconsequential delivery shortage, and it is determined that such action is in the best interests of the Government, notwithstanding the default provisions of the contract. Such action will be taken only upon the written request of the contractor and, in no event, shall the total downward contract price adjustment resulting from an inconsequential delivery shortage exceed \$250.00 or 5 percent of the contract price, whichever is less.

(10) Execute supplemental agreements to permit a change in place of inspection at origin specified in firm-fixed-price supply contracts awarded to non-manufacturers, as deemed necessary to protect the Government's interests.

(11) Prepare evaluations of contractor performance in accordance with Subpart 42.15.



(c) Any additional contract administration functions not listed in 42.302(a) and (b), or not otherwise delegated, remain the responsibility of the contracting office.





## Appendix D.

### Excerpts from GAO Report on DCAA and DCMA Workforce Reductions and Oversight (GAO/NSAID-98-127)<sup>38</sup>

According to DCAA officials, in response to workforce reductions and acquisition reform initiatives, DCAA focused its efforts on implementing risk assessment procedures and process reengineering activities. For example, DCAA established risk assessment procedures for three categories of contractors:

- Major contractors. These contractors (roughly 250) have over \$70 million in DOD contracts. DCAA assesses them on their internal controls for such business systems as compensation, billing, labor, material, and purchasing. DCAA reviews and rates all major contractors at least once a year.
- Non-major contractors. These contractors (roughly 1,750) have between \$5 and \$70 million in DOD contracts. DCAA assesses them on an “as-needed basis.” According to DCAA officials, risk factors such as evidence of budgetary control and indications of financial instability are used as criteria for determining the need for assessment.
- Small contractors. These contractors (roughly 2,000) have less than \$5 million in DOD contracts. They are assessed based on a random sample.

DCAA has also implemented process reengineering activities intended to improve the efficiency of its workforce, including the following:

- Integrated product teams. These teams are composed of DCAA and contractor personnel through which DCAA provides real-time advice and feedback on estimating methods, proposal reviews, and audit results.
- Contractor self-governance. These programs are designed to strengthen contractor internal controls and the government’s reliance on related systems. These programs also promote reduced audit cycle time, reduced oversight, and improved communications and working relationships between DCAA and contractor personnel.
- Contractor direct billing. This program allows qualified contractors to submit public vouchers directly to paying offices rather than through DCAA. While DCAA will continue provide oversight by periodically reviewing contractors and examining a sampling of paid vouchers, this program is expected to substantially reduce audit time without putting accountability at risk.

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<sup>38</sup> GAO Report GOA/NSIAD-98-127, “Acquisition Management—Workforce Reductions and Contractor Oversight, General Accounting Office, July 1998.



In response to mandates requiring DCMC to reduce its workforce and promote acquisition reform, DCMC officials stated that they have focused their initiatives on managing risk and fostering efficient operations. The risk-based initiatives are designed to coincide with DCMC's focus on more process review and less product inspection. DCMC reduced its quality assurance specialist staff by 54 percent from fiscal year 1990 to fiscal year 1996. As a result, DCMC emphasized initiatives that are designed to promote risk management in order to better identify customer requirements, focus

on critical processes, and rely on data analysis. Risk management initiatives include the following:

- Contractor Self-Oversight. Contractor self-oversight is designed to make contractors more responsible for contract compliance and to reduce DCMC surveillance. Test cases have been completed for property, production surveillance, and quality assurance sites.
- Engineering Change Proposals. Because 98 percent of all Class II Engineering Change Proposals are accepted by the government,<sup>4</sup> DCMC is questioning the necessity of the current review process and is looking to reduce the level of review in this arena. DCMC is also trying to resolve the contractual implications of reduced oversight of this issue.
- Performance-Based Assessment Model. This model is intended to determine the level and frequency of review on the basis of contractors' risk potential. The level of risk is based on the extent to which end products meet cost, schedule, and performance goals.



Acquisition reform initiatives intended to promote efficient operations include the following:

- Single Process Initiative. This initiative allows contractors to have existing contracts modified to replace multiple government-unique management and manufacturing systems with common, facilitywide systems. The initiative is designed to promote reductions in contractor operating costs by encouraging the consolidation of common processes in facilities that produce commercial and DOD products. DOD anticipates that these actions will result in cost, schedule, and performance benefits.
- Government Source Inspection. Government inspectors have been required to review stock items at a contractor's facility prior to acceptance and delivery. This inspection represents a significant cost. To eliminate unnecessary inspections, DCMC waived mandatory inspections for contractors that perform at quality levels higher than those specified in their contracts.
- Early Contract Administration Services. This initiative involves DCMC personnel in nontraditional contract administration services early in the acquisition process (typically in the pre-award stages). The purpose is to minimize downstream acquisition problems by helping buying offices select more capable contractors, construct more effective solicitations, and develop more executable contracts. Examples include developing and

reviewing solicitation packages and contracts, participating on source selection teams, and performing software capability evaluations.



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